IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 510 OF 2005

Oriental Educational Trust,
Ulhasnagar-4, Dist. Thane. ... Appellant

V/s

Smt. Nilima Valmik Khairnar ... Respondent

ALONGWITH
SECOND APPEAL NO. 507 OF 2005

Oriental Educational Trust,
Ulhasnagar-4, Dist. Thane. ... Appellant

V/s

Smt. Nilima Ashok Pagare ... Respondent

ALONGWITH
SECOND APPEAL NO. 511 OF 2005

Oriental Educational Trust,
Ulhasnagar-4, Dist. Thane. ... Appellant

V/s

Smt. Usha Narayan Rane ... Respondent

ALONGWITH
SECOND APPEAL NO. 512 OF 2005

Oriental Educational Trust,
Ulhasnagar-4, Dist. Thane. ... Appellant

V/s

Smt. Manisha Sahebrao Patil ... Respondent

Mr. H.D. Buch with Mr. S.K. More for the appellants.

Mr. M.S. Lagu for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 9TH AUGUST, 2005

P.C.:

1. The appellant Trust has filed these appeals against the judgments and orders passed by the Addl. District Judge, Kalyan, dated 3.4.2004 allowing the appeals and setting aside the judgments and orders passed by the Civil Judge, Jr.Divn., Ulhasnagar dated 31.1.2001 decreeing the plaintiff's suit for the amounts which are different in all matters.

2. All these appeals are taken up for hearing together as the appellants are the same and issues involved are similar in nature and hence are being disposed of by common order. The respondents are the teachers in the school run by the plaintiff Trust.

3. I have heard learned counsel for both parties. Perused the record.

4. The plaintiff is an Educational Trust who has filed the suit for recovery of various amounts with further interest from the defendant teachers. It is the case of

the plaintiff that it runs the educational sections like primary schools, secondary schools, junior college of the education and is Government recognized institution. Employees of the plaintiff Trust are paid salary by the Government as per the educational policy. Defendants were appointed as Assistant Teachers for primary section of the school run by the plaintiff Trust for the academic year 1998-1999. As there was no sanction or approval for the appointments of the defendants, the defendants had taken advance salary from the plaintiff Trust from time to time on condition of its repayment on receiving their salary from the Government. Later on, in the month of August, 1999, the Government paid salary to the defendants for the period from June, 1998 to June, 1999 by depositing the same in the bank account of the respective defendants. The defendants had withdrawn the said salary amount from their respective bank accounts. In fact, it is the case of the plaintiff that the defendants were required to repay the salary amount but failed to do so inspite of repeated demands. Hence the suit was filed for recovery of the said amounts from the defendants.

5. Defendants contested the suit on various grounds, inter-alia submitting that it is not correct that they

had taken loan from the plaintiff Trust by way of advance salary and, therefore, denied the liability of payment of the said amounts. According to the defendants, when they received the lumpsum amount of salary from the Government, the plaintiff demanded illegal gratification and when defendants refused to pay the same, the suit came to be filed. Defendants also sought to make out the case to the effect that plaintiff had asked them to sign on the blank register and on enquiry plaintiff told them that the auditor has asked the plaintiff Trust to maintain separate salary register for the defendants and other teachers who were getting year to year approval like the defendants. Hence they signed the blank register, of which the advantage is being taken by the plaintiff Trust. On such and other grounds, the suit was sought to be dismissed.

6. The Trial Court adjudicated the dispute on merits and came to the conclusion that the plaintiff Trust had proved that the defendant was liable to pay the requisite amounts as alleged by them with interest. It was further held that the defendants had failed to prove that they had not received the advance salary and their signatures were obtained by misleading them and, as such, the suit came to be decreed.

7. The appeal was carried to the District Court. The learned Addl. District Judge, Kalyan, after hearing both sides, came to the conclusion that the Trial Court had erred in decreeing the suit and hence the appeal came to be allowed and suits were dismissed. Hence the present appeals.

8. At the outset, it may be noted that there is absolutely no substantial question of law involved in these appeals. The learned counsel for the appellant submitted that the the plaintiff's evidence on record was not properly appreciated by the learned lower appellate Court when he came to the conclusion that it was for the plaintiff Trust to prove that defendants were not subjected to misrepresentation and, as such, the burden to prove that aspect was wrongly imposed by the plaintiff. However, in this regard, it must be noted that the lower appellate Court Judge is seen to have properly appreciated the entire evidence on record while holding that the plaintiff had failed to prove that they had made payment of advance salary. It was also held that the plaintiff had obtained signatures of the defendants on blank register which amounted to fraudulent pratice and, as such, the suit came to be

dismissed by allowing the appeal. In this regard, I must note that, while considering the total evidence on record, it must be borne in mind that the relationship between the plaintiff and the defendants is that of employer and employee and, as such, the circumstances proved on record are sufficient to show that the defendants were compelled to sign blank register for the purpose of satisfaction of the audit of the plaintiff Trust. Therefore, I am inclined to accept the reasoning adopted by the lower appellate Court Judge while he has recorded the findings to the effect that the signatures of the defendants were obtained by misrepresentation on the blank register. Be that as it may, the fact remains that, it is a issue of fact which is determined by the lower appellate Court and it would brook no interference especially when no substantial question of law appears to be involved in the present case.

9. Time and again, the Apex Court has held that the findings recorded by the lower appellate Court on issue of fact, howsoever erroneous, have to be accepted by the High Court under Sec. 100 of C.P.C., especially when it is found that the available evidence gives way to two possible explanations, one in favour of the plaintiff and the other against the said party and, therefore, the

view recorded by the lower appellate Court, which is last Court of fact, cannot be interfered with when it is found that the said view is neither unreasonable nor perverse.

10. Under the circumstances, I hold that there is no merits in these appeals and consequently, the appeals stand dismissed with no order as to costs.

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